

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

WELLS FARGO BANK, National)	4:10CV3120
Association, <i>et al.</i> ,)	
)	
Plaintiffs,)	MEMORANDUM
v.)	AND ORDER
)	
CLARK E. BETTENHAUSEN,)	
)	
Defendant.)	

On February 25, 2011, the court granted a motion for summary judgment filed by the plaintiff, Wells Fargo Bank, and entered judgment in its favor and against the defendant, Clark Bettenhausen, in the amount of \$140,808.57 plus interest of \$16.59 per day from and after June 28, 2010. On March 10, 2011, the defendant filed a motion pursuant to Federal Rule of Civil Procedure 59(e) to alter or amend the judgment (filing [61](#)), and also a notice of appeal (filing [62](#)).

The plaintiff argues that the filing of the notice of appeal divests the court of jurisdiction, but Rule 4(a)(4)(B)(i) of the Federal Rules of Appellate Procedure provides that “[i]f a party files a notice of appeal after the court announces or enters a judgment—but before it disposes of any motion listed in Rule 4(a)(4)(A) [including a Rule 59(e) motion]—the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.” The defendant’s Rule 59(e) motion will be considered as having been filed before the notice of appeal. However, it will be denied because there is no showing by the defendant that the court’s judgment is erroneous in any respect.

The clerk of the court advises that the defendant has not submitted the required appeal fee of \$455.00 or filed a motion to proceed in forma pauperis (IFP) on appeal. He has not been permitted to proceed in forma pauperis in this court.

Accordingly,

IT IS ORDERED:

1. The defendant's motion to alter or amend judgment (filing [61](#)) is denied.
2. The defendant, within 14 days from the date of this order, shall file with the clerk of the district court either the appeal fee of \$455.00 or, if appropriate, a motion to proceed in forma pauperis on appeal, with supporting affidavit as required by Federal Rule of Appellate Procedure 24(a)(1).
3. In response to the clerk's memo (filing [63](#)), if the defendant does not comply with the aforesaid filing requirement within 14 days, the clerk is directed to send copies of this memorandum and order and the notice of appeal to the Clerk of the United States Court of Appeals for the Eighth Circuit for disposition of the appeal.

April 4, 2011.

BY THE COURT:

Richard G. Kopf
United States District Judge